Supreme Court, U.S.
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No. 96-443

In The

Supreme Court of the United States

October Term, 1996

BETTYE L. COUGHLIN,

Petitioner,

vs.

DR. ROBERT E. HOWE; DR. WILLIAM B. NICKELL; SIMON-WILLIAMSON CLINIC, P.C.; et al.,

Respondents.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

WHETHER THE ELEVENTH CIRCUIT COURT OF APPEALS PROPERLY GRANTED THESE RESPONDENTS' MOTIONS TO DISMISS BASED ON THE PETITIONER'S FAILURE TO STATE A CLAIM AGAINST THESE RESPONDENTS UPON WHICH RELIEF COULD BE GRANTED.

LIST OF PARTIES

The Petitioner is Bettye L. Coughlin. The Respondents are Baptist Medical Center Princeton, Rayford Thweat, Michael C. Buchanan, Jefferson County Health Department, Blue Cross/Blue Shield of Alabama, Blue Cross/Blue Shield of Pennsylvania, University of Alabama in Birmingham, Luis O. Vasconez, Brookwood Medical Center, Dr. Gordon Robinson, Jr., Dr. James C. Upchurch, Dr. Jorge A. Lazarte, Alabama Psychiatric Services, Dr. William B. Nickell, Carraway Medical Center, Dr. Robert E. Howe, Dr. A. W. Keith, Simon-Williamson Clinic, P.C. and Medical Center East.

This brief opposing the Petition for Writ of Certiorari is filed on behalf of Dr. Robert E. Howe, Dr. William B. Nickell and Simon-Williamson Clinic, P.C.

TABLE OF CONTENTS

Page

QUESTION PRESENTED..... i

LIST OF PARTIES ii

TABLE OF CONTENTS..... iii

TABLE OF AUTHORITIES..... iv

STATEMENT OF THE CASE..... 1

REASONS FOR DENYING THE PETITION..... 3

CONCLUSION 6

TABLE OF AUTHORITIES

Page

CASES:

Conley v. Gibson, 355 U.S. 41 (1957) 4

Marshall County Bd. of Education v. Marshall County Gas Dist., 992 F.2d 1171 (11th Cir. 1993)..... 5

Robertson v. Dean Witter Reynolds, Inc., 749 F.2d 530 (9th Cir. 1984)..... 5

RULES:

Supreme Court Rule 10..... 3

STATEMENT OF THE CASE

Petitioner brought this action against numerous medical providers on August 11, 1994 in the Circuit Court of Jefferson County, Alabama. In her Complaint, Petitioner stated that she is suing Respondents William B. Nickell, M.D., Robert E. Howe, M.D., and Simon-Williamson Clinic, P.C., for libel, slander, and conspiracy to deny treatment. In the narrative portion of her Complaint, Petitioner did not allude to any of these three Respondents by name, and there is no further indication of the precise nature of her alleged claims against these three Respondents. Respondents Dr. Robert Howe, Dr. William Nickell, and the Simon-Williamson Clinic, P.C., filed a Motion to Dismiss in state court.

On September 21, 1994, defendant Blue Cross/Blue Shield of Alabama filed a Petition for Removal from Jefferson County Circuit Court to the United States District Court for the Northern District of Alabama, Southern Division. On October 12, 1994, the Petitioner filed an objection to removal of the action to federal court. Judge Hancock treated this pleading as a Motion to Remand, and denied the motion in his Order of November 4, 1994. Judge Hancock considered the Motions to Dismiss filed earlier in state court, and on November 4, 1994, Judge Hancock entered an Order dismissing the claims made against Respondents Nickell, Howe, and the Simon-Williamson Clinic, P.C., among others. Judge Hancock expressly found in his order that these three Respondents were due to have the claims against them dismissed based on the fact that the Petitioner had failed to state a claim against them upon which relief could be granted. The court noted that the Petitioner failed to make any

definitive allegation against Respondent Simon-Williamson Clinic, P.C.

Judge Hancock also stated in his order that the only claim against Dr. Howe was that he "made (plaintiff and her son) wait all afternoon" and that Carraway and Howe told her that "silicone was man's most wonderful inventions [sic]". The court was satisfied that such an allegation was not sufficient to state a valid claim against Dr. Howe and that the claims against him should be dismissed.

Judge Hancock also noted that Petitioner alleged that Dr. Nickell demanded an unnecessary mammogram from her. He wrote that this was the only claim against Dr. Nickell and that it was apparently an attempt to bring a medical malpractice claim against Dr. Nickell. Judge Hancock held that a mammogram is a preventative measure and that the recommendation and performance of such an examination, as a matter of law, does not constitute medical malpractice.

On November 14, 1994, the Petitioner filed a Notice of Appeal from the Judge's entry of the Order. On April 5, 1996, the Judge's Order was affirmed without opinion by the Eleventh Circuit Court of Appeals.

The Petitioner's claims in this case apparently stem from medical treatment she received in 1971. According to the pleadings she has submitted, Petitioner had cysts removed from her breasts at Baptist Medical Center Princeton. After the surgery, plastic surgeon Dr. Gordon Robinson inserted breast implants, which Petitioner claims she did not want. Petitioner claims in her complaint that the implants were ruptured at the time of

surgery, and that both the surgeon and the hospital were aware of this fact. Petitioner claims that she is suffering from the effects of silicone poisoning.

Petitioner also claims that Dr. Upchurch and Dr. Robinson falsely reported to the Jefferson County Health Department in November, 1971 that she had syphilis, when she did not. In her complaint, Petitioner asserts that she is suing Respondents Nickell, Howe, and Simon-Williamson Clinic, P.C., for libel, slander and conspiracy to deny treatment, but she does not include facts describing any incidents which she contends constituted libel, slander or conspiracy. On its face, her complaint failed to state any claim against any of these three Respondents.

REASONS FOR DENYING PETITION

1. Petitioner's statement of the case set forth in her Petition fails to mention Respondents Howe, Nickell, and Simon-Williamson Clinic, P.C. Thus, these Respondents take the position that Ms. Coughlin is not asking for a review of the dismissal of the case against these defendants and the Eleventh Circuit's affirmance of the same. At no point in her Petition does she say that she did in fact state a claim against any or all of these three Respondents, nor does she describe facts which could possibly lead to the conclusion that she has a valid claim against any of these Respondents. Furthermore, Petitioner's petition contains misstatements, however, because these misstatements do not relate to these three Respondents, they will not be addressed in this brief.

2. No compelling reason exists for granting this petition. Supreme Court Rule 10 sets forth the types of

reasons that would justify a grant for a Petition for Writ of Certiorari. These include a scenario in which the courts of appeals have entered conflicting decisions, a state court of last resort has decided an important federal question in a way that conflicts with decisions of other courts of last resort, or a court has decided an important question of federal law that should be settled by this Court.

None of these reasons are present in the instant case. No claims were stated against these Respondents in the Petitioner's Complaint, and that was the basis for the court's order dismissing these claims. It was also the basis for the Eleventh Circuit's affirmance of that dismissal. At no time were any federal questions presented, nor does the decision of the Eleventh Circuit Court of Appeals conflict with any other decisions of other appellate courts. Therefore, based on jurisdictional and procedural grounds, this Court should not consider the claims of the Petitioner.

3. None of the reasons for granting the Petition as listed by Petitioner would serve as a proper basis for review by this Court. Each of the reasons proffered by Ms. Coughlin will be addressed separately:

> (a) Petitioner claims that the decisions of the Court of Appeals are in direct conflict with all laws and rules. However, it is well-settled in all jurisdictions that a plaintiff is not allowed to proceed on a claim if she has in fact failed to state a claim against a defendant. A complaint may be dismissed when it appears beyond doubt that the plaintiff can prove no set of facts in support of his or her claim which would entitle him to relief. *Conley v. Gibson*, 355 U.S. 41,

45-46 (1957). A dismissal can be based on the lack of cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory. *Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d 530, 533-34 (9th Cir. 1984). The court may dismiss a complaint when no construction of the factual allegations contained therein would support a cause of action. *Marshall County Bd. of Education v. Marshall County Gas Dist.*, 992 F.2d 1171, 1174 (11th Cir. 1993).

(b) As her second reason, Petitioner claims that the District Judges in Atlanta are out of control and willing to go to any length to cover their involvement in the experiment. The Petitioner's argument about the existence of an "experiment" has not been made before. Petitioner also fails to adequately define the "experiment".

(c) Petitioner's next argument is that the district court in Atlanta denied her meaningful discovery. Because the claims against Respondents Howe, Nickell, and Simon-Williamson Clinic, P.C., were dismissed on a 12(b)(6) Motion, discovery was not required. The lower court's decision was based on the fact that Ms. Coughlin's Complaint itself failed to state a claim against any of these Respondents, regardless of what discovery might reveal later.

(d) Petitioner states as her fourth reason that ERISA is not a shield to commit murder. In this case, no one has been murdered, and Petitioner herself is alive.

(e) Petitioner then argues that agents of the Health Department are not immune from suit for knowingly doing wrongful acts. None of these Respondents on behalf of whom this opposition is filed are agents or employees of

the Health Department. Therefore, this argument does not apply to these Respondents.

(f) Finally, Petitioner claims that UAB is the same as the Health Department and that respondeat superior takes the blame. In this section, Petitioner has failed to articulate a meaningful reason for granting her Petition for Writ of Certiorari. While it is unclear what petitioner means by this argument, *it is clear* that she is not challenging a decision involving an important federal or constitutional issue.

CONCLUSION

The Petition for Writ of Certiorari should be denied because the case was properly decided based on well-settled pleading requirements. The Petitioner's objections to the district court's dismissal of the claims against these Respondents and the Eleventh Circuit's affirmance of that decision, does not raise a federal question appropriate for review by this Court. No federal question was raised or decided in the courts below as to these three Respondents. Accordingly, Respondents Dr. Robert E. Howe, Dr. William B. Nickell, and Simon-Williamson Clinic, P.C.,

respectfully request that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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